

PART 67—EPA APPROVAL OF STATE NONCOMPLIANCE PENALTY PROGRAM

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AUTHORITY: Sec. 120 of the Clean Air Act, as amended, 42 U.S.C. 7420, unless otherwise noted.

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Subpart A—Purpose and Scope

§ 67.1 Purpose and scope.

This part describes the standards and procedures under which EPA will approve State programs for administering the noncompliance penalty program under section 120 of the Clean Air Act and will evaluate actions taken

by States with approved programs. Subpart A describes the purpose of the part. Subpart B states the conditions under which EPA will approve State programs to administer the noncompliance penalty provisions. Subparts C and D state when and how EPA will issue its own notices to owners or operators of sources in States with approved programs, and how it will review State decisions to grant or deny exemptions from the penalty. Finally, subpart E states how EPA will review State assessments of a penalty.

Subpart B—Approval of State Programs

§ 67.11 Standards for approval of State programs.

(a) The Administrator shall approve any program submitted by a State, or by a local governmental agency where no program has been submitted by a State, for administering the noncompliance penalty provisions of section 120 of the Clean Air Act upon finding that the program conforms to the requirements of the Act and to those of this part and 40 CFR part 66. References to “State program” in this part shall be read as including local governmental agencies and their programs.

(b) The Administrator shall not approve any State program that does not provide explicitly for:

(1) Issuance of a notice of noncompliance, in a manner consistent with procedures under part 66, upon discovery by the State or upon notification by EPA of a violation of applicable legal requirements, which notice satisfies the informational requirements set forth in § 66.13.

(2) Levels of staffing and funding satisfactory, in the judgment of the Administrator, to implement and enforce the requirements of section 120 in that State, together with adequate provision for maintaining such levels;

(3) A capability to carry out the financial analysis and procedures specified in these regulations and the Technical Support Document, Instruction Manual, and related Computer Program, available from the Director of Stationary Source Compliance Division, EN-341, 1200 Pennsylvania Ave., NW., Washington, DC 20460, together

with adequate provision for maintaining such capability. Such capability may be provided by trained State personnel or through qualified contractors;

(4) Except as provided in paragraph (a)(6) of this section, an administrative hearing whenever the owner or operator of a source submits a petition for reconsideration of a notice of non-compliance on the ground that the source either is not in violation of applicable legal requirements, or is entitled to an exemption, or both, or submits a petition to challenge a recalculation of the penalty by the State, provided that such petitions raise issues of fact that would require a hearing under part 66. This hearing need not conform to the requirements of 5 U.S.C. 554 as long as its procedures provide for:

- (i) An initial decision by the hearing officer on the record;
- (ii) A hearing officer who has not performed investigative or litigating functions in any enforcement action against the source owner or operator in question;
- (iii) Opportunity for public participation on reasonable notice, including intervention, by interested persons;
- (iv) Opportunity for cross-examination or an equivalent opportunity for confrontation between persons advocating differing positions on material factual matters; and
- (v) An initial decision by the hearing officer within ninety days of commencement of the hearing unless such period is extended upon agreement of the parties.

(5) Explicit provision for:

(i) Notice to the Administrator of any determination granting an exemption, or finding a source in violation of applicable legal requirements, and any penalty calculation and payment schedule approved or calculated by the State, together with any information necessary to verify its accuracy;

(ii) Within 30 days of receipt of a request from the Administrator, transmission of a copy of the record of the hearing held under paragraph (a)(4) or (6) of this section, including any proffered evidence and a ruling on its admissibility and the State's decision on the merits; and

(iii) Additional reporting and record-keeping, if necessary, adequate to enable the Administrator to review the State's administration of the program and determine whether it conforms to the Act and to part 66 of these regulations. Such requirements will be specified in the Notice of Delegation to the State.

(6) A hearing on the question of whether the owner or operator of a source is entitled to an exemption pursuant to § 66.32 or 66.33 may be informal. The hearing shall be scheduled upon notice to the public. Reasonable opportunity to testify and for submission of questions to the petitioner by members of the public shall be afforded. A record of the hearing shall be made, and the decision of the hearing officer made in writing within a reasonable period of time after the close of the hearing.

(c) The State may delegate all or part of its responsibilities under its program to a local governmental agency to implement the program within the jurisdiction of the local agency, *Provided* that the program of the local government agency meets the requirements of this section.

(d) No State penalty program or program of one of its agents shall be disapproved because it is more stringent than the program established by part 66 or by section 120 where the State or local agent concludes that it has independent authority under State or local law to implement and administer the more stringent portions of the program.

[45 FR 50117, July 28, 1980, as amended at 54 FR 25259, June 14, 1989]

§ 67.12 Application for approval of programs.

A state that wishes to administer a section 120 program shall submit an application in writing to the Administrator describing its proposed program. All necessary supporting materials shall accompany the application.

§ 67.13 Approval.

(a) The Administrator shall evaluate any application submitted under § 67.12 and shall:

- (1) Approve the program and delegate authority to the State to administer